



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

August 26, 2021

Ms. Brandi Grant
Secretary
City of O'Donnell
615 8th Street
O'Donnell, Texas 79351

OR2021-23466

Dear Ms. Grant:

You ask whether certain information is subject to required public disclosure under the Public Information Act (the "Act"), chapter 552 of the Government Code. Your request was assigned ID# 900810.

The City of O'Donnell (the "city") received a request for a list of candidates for local office and ballot applications. You state you will release some information. You claim some of the submitted information is excepted from disclosure under section 552.1175 of the Government Code.¹ We have considered the exception you claim and reviewed the submitted information.

Initially, we note the submitted information is subject to section 1.012 of the Election Code, which provides as follows:

(a) Subject to Subsection (b), an election record that is public information shall be made available to the public during the regular business hours of the record's custodian.

...

¹ Although we also understand you to claim 552.117 of the Government Code for the submitted information, section 552.1175 is the proper exception to raise in this instance because the city does not hold the submitted information in an employment capacity. In addition, although you also raise section 552.108 of the Government Code, you have not provided any arguments to support this exception. Therefore, we assume you have withdrawn your claim this section applies to the submitted information. *See* Gov't Code §§ 552.301, .302.

(c) Except as otherwise provided by this code or [the Act], all election records are public information.

(d) In this code, “election record” includes:

(1) anything distributed or received by government under this code;

...

(3) a certificate, application, notice, report, or other document or paper issued or received by government under this code.

Elec. Code § 1.012(a), (c), (d)(1), (d)(3). An application for a place on an election ballot “is public information immediately on its filing.” *Id.* § 141.035. Therefore, under section 1.012(a), the information at issue is public information subject to disclosure, except as provided by the Act. *See id.* § 1.012(a), (c). Accordingly, we will address your argument against disclosure of this information.

Section 552.101 of the Government Code excepts from disclosure “information considered to be confidential by law, either constitutional, statutory, or by judicial decision.”² Gov’t Code § 552.101. Section 552.101 encompasses the doctrine of common-law privacy. *Indus. Found. v. Tex. Indus. Accident Bd.*, 540 S.W.2d 668, 685 (Tex. 1976). Under the common-law right of privacy, an individual has a right to be free from the publicizing of private affairs in which the public has no legitimate concern. *Id.* at 682. The Third Court of Appeals has concluded public citizens’ dates of birth are protected by common-law privacy pursuant to section 552.101. *Paxton v. City of Dallas*, No. 03-13-00546-CV, 2015 WL 3394061, at *3 (Tex. App.—Austin May 22, 2015, pet. denied) (mem. op.). Thus, the city must withhold the public citizens’ dates of birth under section 552.101 of the Government Code in conjunction with common-law privacy.

Section 552.1175 of the Government Code protects the home address, home telephone number, emergency contact information, date of birth, social security number, and family member information of certain individuals when that information is held by a governmental body in a non-employment capacity and the individual elects to keep the information confidential. Gov’t Code § 552.1175. Section 552.1175 applies, in part, to an elected public officer. Act of May 10, 2021, 87th Leg., R.S., H.B. 1082, § 2 (to be codified at Gov’t Code § 552.1175(a)(17)). We note section 552.1175 is applicable to personal cellular telephone numbers, provided the cellular telephone service is not paid for by a government body. *See* Open Records Decision No. 506 at 5-6 (1988). Upon review, we find some of the remaining information, which we have marked, pertains to elected public officers, and is held by the city in a non-employment capacity. Accordingly, the city must withhold the information we marked under section 552.1175 of the Government Code if the individuals elect to restrict access to their information in accordance with section 552.1175(b) of the Government Code and the cellular telephone service is not paid for by a governmental body.

² The Office of the Attorney General will raise mandatory exceptions on behalf of a governmental body, but ordinarily will not raise other exceptions. *See* Open Records Decision Nos. 481 (1987), 480 (1987), 470 (1987).

Section 552.137 of the Government Code excepts from disclosure “an e-mail address of a member of the public that is provided for the purpose of communicating electronically with a governmental body” unless the member of the public consents to its release or the e-mail address is of a type specifically excluded by subsection (c). *See* Gov’t Code § 552.137(a)-(c). The e-mail addresses at issue are not excluded by subsection (c). Therefore, the city must withhold the personal e-mail addresses in the remaining information under section 552.137 of the Government Code, unless the owners affirmatively consent to their public disclosure.

In summary, the city must withhold the public citizens’ dates of birth under section 552.101 of the Government Code in conjunction with common-law privacy. The city must withhold the information we marked under section 552.1175 of the Government Code if the individuals elect to restrict access to their information in accordance with section 552.1175(b) of the Government Code and the cellular telephone service is not paid for by a governmental body. The city must withhold the personal e-mail addresses in the remaining information under section 552.137 of the Government Code, unless the owners affirmatively consent to their public disclosure. The city must release the remaining information.

This letter ruling is limited to the particular information at issue in this request and limited to the facts as presented to us; therefore, this ruling must not be relied upon as a previous determination regarding any other information or any other circumstances.

This ruling triggers important deadlines regarding the rights and responsibilities of the governmental body and of the requestor. For more information concerning those rights and responsibilities, please visit our website at <https://www.texasattorneygeneral.gov/open-government/members-public/what-expect-after-ruling-issued> or call the OAG’s Open Government Hotline, toll free, at (877) 673-6839. Questions concerning the allowable charges for providing public information under the Public Information Act may be directed to the Cost Rules Administrator of the OAG, toll free, at (888) 672-6787.

Sincerely,

Joseph Hoggatt
Attorney
Open Records Division

JWH/jm

Ref: ID# 900810

Enc. Submitted documents

c: Requestor
(w/o enclosures)